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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA  
2010 OCT 12 PM 4:21  
JEANNE HICKS, CLERK  
*V. Adams*  
BY: \_\_\_\_\_

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Cause No. P1300CR20081339

Plaintiff,

Division 6

v.

STATE'S MOTION TO CORRECT  
MOTION FOR RECONSIDERATION OF  
SANCTION IMPOSED JULY 26, 2010  
[FILED JULY 28, 2010] AND REQUEST  
FOR EVIDENTIARY HEARING AND  
MOTION TO UNSEAL RECORDS OF EX  
PARTE PROCEEDINGS

STEVEN CARROLL DEMOCKER,

Defendant.

FILED UNDER SEAL

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, moves this Court to allow the State to make corrections to its previously filed Motion for Reconsideration of Sanction Imposed July 26, 2010 [Filed July 28, 2010] and Request for Evidentiary Hearing and Motion to Unseal Records of Ex Parte Proceedings (hereinafter "State's Motion"). This Motion is based upon Defendant's "Response" to the above referenced Motion that was filed in the form of a Motion to Strike.

Based upon the information contained in Defendant's Motion to Strike, the State did follow up research to confirm some of the information contained therein alleging errors by the

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DIVISION 6

1 State. Undersigned counsel can now confirm an error was made and desires to rectify that  
2 error herein.

3 It is clear that Defendant appropriately filed an application under Rule 15.9 for an ex  
4 parte proceeding on July 6, 2009. That application was provided to the State but subsequently  
5 sealed by the Honorable Judge Lindberg on July 6, 2009, the same date it was filed, with no  
6 request to do so by Defendant and prior to any response by the State. When undersigned  
7 counsel was researching the issue for the Motion to Reconsider, he went to the OnBase  
8 database used by the Clerk of the Court (and the memories of the other attorneys involved)  
9 rather than to the voluminous file contained in the Yavapai County Attorney's Office. OnBase  
10 had the application sealed pursuant to the Court's order and therefore OnBase did not show  
11 that the applicaton was in fact filed. The application was available in the State's internal file as  
12 was the July 6 and 10, 2009 minute entries and that is where the mistake was made.  
13 Undersigned counsel apologizes to the Court and defense counsel for the error.  
14

15 However, the underlying nature of the State's Motion to Reconsider remains  
16 unchanged. It is clear that the scope of the ex parte hearing conducted on July 10, 2009  
17 exceeded that authorized by Rule 15.9. Although the State can only speculate as to the entire  
18 extent of the hearing, it is clear that at least a finding of indigency was made at that time. Such  
19 a finding is not authorized under Rule 15.9. In fact, the Rule 6.4 of Rules of Criminal  
20 Procedure is quite clear that such a hearing is to be conducted publicly. Therefore, the error in  
21 the State's Motion to Reconsider was in stating that an ex parte hearing was held without prior  
22 notice to the State.  
23

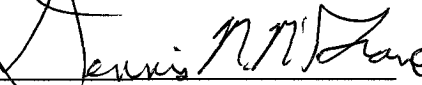
24 The issues of an appropriate application for an ex parte proceeding [see *Morehart v.*  
25 *Barton*, --- P.3d ---, 2010 WL3177885 (App. August 12, 2010)], opportunity for the State to  
26

1 respond to the application, and scope of the ex parte proceeding still remain. Regarding the  
2 scope of the ex parte hearing, it seems apparent that a discussion regarding Defendant's  
3 indigency took place on July 10, 2009. Such a matter is outside the scope of Rule 15.9, and  
4 thus it appears that a violation of the rules previously stated in the Motion to Reconsider did in  
5 fact occur.

6  
7 **Conclusion**

8 The State requests that this Court allow the State to correct the error contained in its  
9 Motion for Reconsideration. However, despite the error that occurred in the State's Motion to  
10 Reconsider, the propriety of the sanction is still in question. Therefore, the State confirms here  
11 its prior request to unseal all ex parte proceedings in this matter and its request for an  
12 evidentiary hearing after the conclusion of the trial in this matter to determine the  
13 appropriateness of any sanction in this matter.

14  
15 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2010.

16 Sheila Sullivan Polk  
17 YAVAPAI COUNTY ATTORNEY  
18 By:   
19 Dennis M. McGrane  
20 Chief Deputy County Attorney  
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COPIES of the foregoing delivered this  
11th day of October, 2010 to:

Honorable Thomas B. Lindberg  
Division 6  
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(via email)

Honorable Warren Darrow  
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By: 